

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Case No. 3:20-cv-01292

**DECLARATION OF DAVID PRINCE
IN SUPPORT OF MOTION TO
COMPEL ARBITRATION**

V.

Date: March 26, 2020
Time: 1:30 p.m.

Respondent.

1 I, David Prince, declare based on personal knowledge as follows:

2 1. I am over the age of 18. I have personal knowledge of the facts stated herein, and
3 if called upon as a witness I could and would testify competently thereto.

4 2. I live in Los Angeles, California.

5 3. My wife, Ashley Prince, and I signed up to begin making deliveries for Caviar on
6 or around August 26, 2018. Our Caviar courier account is in my wife's name, but we make our
7 deliveries for Caviar together.

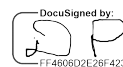
8 4. When I signed up to be a courier, I was required to sign a contract that Caviar
9 provided called the Courier Agreement. That agreement had a Mutual Arbitration provision
10 (referred to as the "Arbitration Agreement"). By making deliveries for Caviar, I agreed to be bound
11 by the Courier Agreement and the Arbitration Agreement.

12 5. As Caviar updated its Courier Agreement, it would require me to agree to the new
13 terms, including the Arbitration Agreement. A true and correct copy of the agreement I believe to
14 be the operative Courier Agreement and Arbitration Agreement, based on the date of my last
15 delivery for Caviar in October 2019, is attached as Exhibit A.

16 6. On January 3, 2020, my attorneys at Keller Lenkner, LLC informed me of the
17 proposed settlement in *Mervyn Cole v. Square, Inc. (d/b/a Caviar)*, Case No. BC719079 in the
18 Superior Court of California, Los Angeles County. They explained the settlement's terms and
19 provided me with the proposed settlement agreement and the proposed settlement notice.

20 7. Based on my review of the settlement terms and my attorney's recommendation, I
21 do not want to participate in the proposed settlement in *Cole*. I believe that my claims against
22 Caviar are worth far more than I would receive in that settlement, and that I am more likely to
23 receive what I am owed if I continue to pursue individual arbitration. I do not want to be part of
24 the *Cole* settlement class.

25
26 Signed on 2/20/2020 in Los Angeles, California.

27
28  DocuSigned by:
FF4B06D2E28F423

David Prince

CERTIFICATE OF SERVICE

I certify that I shall cause the foregoing document to be served on Caviar, LLC via its designated agent for service of process: Novel Brewer located at 901 Market Street, Suite 600, San Francisco, CA 94103.

Dated: February 20, 2020

/s/ Aaron Zigler

Exhibit

A

- Courier Independent Contractor Agreement
- Courier Account Access Guidelines
- Privacy Notice for Couriers and Diners
- Conditional Offer/Background Check Addendum
- E-Sign Consent

Courier Independent Contractor Agreement

Updated: February 2019

Posted on: 2/14/19

Effective Date: 2/14/19

PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN PARTICULAR, PLEASE NOTE THAT SECTION 6 OF THIS AGREEMENT CONTAINS A MUTUAL ARBITRATION PROVISION THAT REQUIRES THE PARTIES TO THIS AGREEMENT TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION TO THE FULLEST EXTENT PERMITTED BY LAW.

This Courier Independent Contractor Agreement (“**Agreement**”) between Square, Inc. (“Square”) d/b/a Caviar, a Delaware company with offices at 1455 Market St., Suite 600, San Francisco, California, 94103 (“**us**” or “**Caviar**”), and you or a person whom you have engaged to deliver on your account (“**you**” or “**Courier**”), lays out the terms governing your relationship with Caviar. Caviar is one of many products, services and business solutions offered by Square. Square is a company that helps create tools that assist sellers in starting, running, and growing their businesses. Square’s point-of-sale software and other business services and products help sellers manage inventory, locations, and employees; access financing; engage customers; and grow sales. Cash App is also a Square product, and provides an easy way for businesses and individuals to send and receive money, store their funds as well as use their funds via a Visa debit card, and recently started offering customers the ability to purchase bitcoin (a 'cryptocurrency' or 'digital currency'). Finally, Caviar is a Square product that offers a technology platform and smartphone applications for pickup and delivery that helps connects individuals seeking food (“**Diners**”), restaurants who contract with Caviar (“**Restaurants**”), and, in those instances where the Diner wishes to have food delivered and the Restaurant does not offer its own delivery services, Couriers as well. Square provides this access through its technology platform (the “**Caviar Platform**”), which Couriers can access through a smartphone application for Couriers (the “**Courier App**”).

You are an independent contractor who wishes to access the Caviar Platform to connect to Diners through the Courier App. You understand and expressly agree that you are not an employee of Caviar, Restaurant, Diners, or other businesses on the Caviar Platform, and that you are providing delivery services on behalf of yourself and your business to Restaurants and Diners, not on behalf of Caviar.

Each and every time you agree to provide the Delivery Services defined in Section 3(A) below, you also agree to this Courier Independent Contractor Agreement, the Caviar Privacy Policy, your Conditional Offer/Background Check Addendum, and the Courier Account Access Guidelines (collectively, the “**Legal Terms**”). These Legal Terms may change from time to time. We will advise you of material changes to the Legal Terms, and you will have the ability to review the Legal Terms every time you log into the Courier App and before you accept an order.

You and Caviar (collectively, “the parties”) agree as follows:

1. Independent Contractor

- a. **Your Relationship With Caviar:** You agree you are an independent contractor and not an employee. Nothing in this Agreement shall create a legal partnership, agency, or joint venture between the parties or give the legal rights of a partner to either party. You understand and agree that the Diner, not Caviar, determines the timing, content and other specifications of the delivery. You understand and agree that the parameters of each delivery are established by the Diner, not Caviar, and represent the end result desired, not the means by which you are to accomplish the end result.
- b. **Freedom to Work for Others:** As an independent contractor, you retain the right to perform services for others and to hold yourself out to the general public as a separately established business. The parties recognize that they are or may be engaged in similar arrangements with others and nothing in this Agreement shall prevent you or Caviar from doing business with others and Caviar understands that you may increase your profitability by performing services for other entities or customers (including, for example, Diners). Caviar neither has nor reserves the right to restrict you from performing services for other entities or Diners at any time, even should such business directly compete with Caviar, and even if you are simultaneously performing a delivery arranged through the Caviar platform.
- c. **Freedom to Choose When to Deliver and Where to Deliver:** As an independent contractor, you have complete discretion to choose when and if you wish to log into the Caviar App and/or accept delivery orders that are offered to you. You also have complete discretion to choose where you wish to make deliveries within the city or area you have contracted to make deliveries. Caviar has no right to control when and if you choose to log into the Caviar Platform or where you choose to log onto the Caviar Platform to make deliveries within the city or area where you’ve signed up to make deliveries.
- d. **No Eligibility for Employee Benefits:** As an independent contractor, you acknowledge and agree that you will not be eligible for any Caviar employee benefits by virtue of performing Delivery Services as a Courier. To the extent you otherwise would be eligible for any Caviar employee benefits, you (on behalf of yourself and any person whom you engage to work on your account) hereby expressly decline to participate in such Caviar employee benefits or welfare plans.
- e. **Expenses:** You certify that you have all products, tools and equipment used in performing Delivery Services (as defined in Section 3(A) below). You are solely responsible for all costs and expenses arising from your performance of Delivery Services. Except as otherwise required by law, you assume all risk of damage or loss to your products, tools and equipment that might occur in connection with performing Delivery Services.
- f. **Taxes:** As an independent contractor, you are solely responsible for paying applicable taxes or charges applicable to you, including any withholding requirements that apply to any such taxes or charges imposed by any government entity, and for compliance with all applicable labor and employment requirements with respect to your self-employment, sole proprietorship or other form of business organization.
- g. **Responsibility for Damages and Losses:** Consistent with Section 2(E), the insurance you must maintain shall cover any damages and losses you or a third party may incur in the course of your performing Delivery Services. To the extent permitted by law, you will be liable to pay for any such damages or losses that arise as a result of

your performing the Delivery Services. Such payable amounts may include (but are not limited to) payments to: insurance companies (e.g., for medical coverage, automobile coverage, etc.), or individuals/Diners/Restaurants (e.g., for damage to property or personal injury).

h. **No Authority to Act on Behalf of Other Party:** Neither you nor Caviar have the authority to make decisions, express views, bind the other by contract or otherwise, assume a liability on behalf of the other party, or pledge the credit of the other party except as specifically provided for in this Agreement or without the express written consent of the other party. Neither you nor Caviar may act as if either has such authority and neither you nor Caviar will represent (expressly, or by implication) that either has such authority or that either is the agent or principal of the other.

2. Eligibility

a. **Ability to Contract:** To make deliveries with Caviar, you must be of at least 18 years old and able to form a binding contract with Caviar in compliance with all applicable local, state, and national laws, rules, and regulations.

b. **Authorization to Work:** To make deliveries with Caviar, you must have authorization to work lawfully in the United States.

c. **Motor Vehicle Report:** If you intend to use an automobile or motorcycle to make deliveries with Caviar, you must have a valid driver's license and a clean driving record. To have a clean driving record you must: (1) have no major violation in the last 5 years; (2) have at least 2 years of driving experience; (3) have no more than three moving violations or accidents in 3 years; (4) have no more than two moving violations or accidents in 1 year; and (5) be over 18 years of age. We may periodically request an updated motor vehicle report. Please note that certain Caviar markets require access to a bike or motorized vehicle to make deliveries using the Caviar App. Please check with your local market when you sign up with Caviar.

d. **Licensing:** If you choose to use a vehicle to make deliveries with Caviar, you must have a valid driver's license and any applicable license or permit as may be required by your state or local authorities.

e. **Insurance:** If you choose to use a vehicle to make deliveries with Caviar, you must at all times maintain sufficient insurance to cover any risks and claims relating to the Delivery Services (as defined in Section 3(A) below) including, without limitation, commercial automobile insurance. You also agree to provide Caviar with a copy of any relevant insurance policy or policies upon request. As an independent contractor, you acknowledge that, to the extent permitted by law, you are not eligible for workers' compensation benefits through Caviar and instead are responsible for maintaining your own workers' compensation insurance. Maintaining your workers' compensation insurance will not disqualify you from any occupational accident insurance that Caviar may make available to you. You are solely responsible for ensuring that any individuals whom you may engage are insured according to the requirements above.

f. **Ability to Accept Payments:** To make deliveries with Caviar, you must be able to accept payment for Delivery Services via Cash App (or any other payment platform that Square may utilize).

g. **Equipment:** To make deliveries with Caviar, you must have the equipment necessary to timely and professionally complete Delivery Orders (as defined in Section 3(E) below), which includes: (a) an iPhone or Android enabled phone with a data plan capable of running the Courier App; (b) an adequately sized thermally insulated delivery bag sufficient to keep orders at the appropriate and safe temperature; and (c) reliable transportation. To the extent you use a vehicle to complete Delivery Orders, you are required to furnish your own vehicle at your own expense as a condition of contracting with Caviar. Although Caviar may at times make thermal bags available to you for purchase or to borrow, you are not required to purchase or borrow any equipment from Caviar.

h. **Engaging Others:** As an independent contractor, you are free to engage any individual (including, without limitation, subcontractors, employees, assistants, and helpers) so long as they meet the eligibility criteria stated in your Conditional Offer/Background Check Addendum and any criteria discussed above in Section 2(A)-(E), and (G), and the individual agrees to satisfy and comply with the Legal Terms, which you will provide to any individual whom you engage. Any Delivery Payment made for a Delivery Order will be paid to you consistent with payment criteria discussed in Sections 3 and 4 below and Caviar will accordingly report such payment (including, as appropriate, all tax consequences) as a Delivery Payment to you. You assume full and sole responsibility for the payment of all amounts due to any person you engage for work performed in connection with your services under this Agreement, including all compensation, benefits and expenses, if any, and, as applicable, for all required state and federal income tax withholdings, unemployment and disability insurance contributions, and social security taxes as to you and any person you engage in performing Delivery Services under this Agreement. Unless mandated by law, Caviar shall have no authority to withhold state or federal income taxes, social security taxes, unemployment insurance taxes/contributions, or any other local, state or federal tax on your behalf for any individual you have chosen to engage. You are solely responsible for ensuring that any individuals whom you may engage are insured according to the requirements specified in Section 2(E), above, and for any losses caused or incurred by any person whom you engage in the course of performing Delivery Services. You are also solely responsible for the direction and control of any individual you have chosen to engage to perform Delivery Services and, consistent with the Courier Account Access Guidelines (incorporated here by reference), any violation that occurs while such an individual is performing Delivery Services on your behalf will accrue to your account.

3. Delivering Orders

- a. **Delivery Services:** You agree to provide Delivery Services in accordance with this Agreement in exchange for payment by Caviar via the Cash App (or any other payment platform that Square may utilize) (the "Delivery Payment") as discussed below in Section 4 (Payment). Delivery Services consist of picking up a Delivery Order at a restaurant and delivering it to the Diner or Diners at the specified location(s), or in cases where the Diner(s) are not present at the time of delivery, making a reasonable, good faith effort to do so, all in a safe, timely, and professional manner.
- b. **Delivery Order:** As a Courier you will be presented with an order or group of orders from the Caviar Platform, which may involve delivery of food or other items (a "Delivery Order"). You may accept or reject the opportunity to deliver a Delivery Order.
- c. **Acceptance of Order:** Once you accept a Delivery Order through the Courier App, that acceptance becomes a binding contract and you are obliged to perform the relevant Delivery Order and Caviar is obliged to pay the applicable Delivery Payment in accordance with this Agreement.
- d. **Completing the Delivery:** Caviar will consider a Delivery Order complete only once the order is: (1) delivered to the Diner, or (2) you make a reasonable effort to contact the Diner, which may include calling, texting, knocking/buzzing, or speaking with the door person, depending on the circumstances. If you are unable to make a delivery after 10 minutes of trying to do so, Caviar will treat the order as forfeited by the Diner and you will be paid for the delivery despite the Diner not receiving the order. If the order has been declared forfeited, you agree to leave the order outside the location specified by the Diner unless you have received a different instruction from the Diner or have spoken with Courier Support about a different arrangement.
- e. **Scheduling:** You may have the opportunity to pre-select the days and times you are available to make deliveries. You do not need to pre-select a schedule in order to deliver with Caviar and you will not be penalized by Caviar if you do not sign-in to the Courier App to make deliveries during the times you pre-selected. Caviar uses scheduling merely as a way of assessing whether there is likely to be a sufficient number of couriers to meet the demand of Restaurants and Diners.

f. **Discretion to Decide How to Make Deliveries:** You have sole discretion to decide how to perform the Delivery Services (so long as consistent with the Courier Account Access Guidelines, incorporated here by reference), including, but not limited to, the route to take to make the most optimal Delivery Order, how you choose to interact with Restaurants and Diners, and the decision to engage others (subject to Section 2(H)).

4. Payment

a. **Delivery Payment:** Caviar will pay you the Delivery Payment for each Delivery Order provided in accordance with and subject to this Agreement. The Delivery Payment is a task-based fee specified in the Courier App at the time a Delivery Order is offered to you. Caviar may also provide incentive or discretionary payments in addition to the Delivery Payment under certain circumstances for additional services such as for unanticipated wait time or for Delivery Services performed at certain times. Diners may also choose to give you a tip, gratuity, or bonus through the Caviar Platform, which will then be paid directly to you. You acknowledge and agree that Caviar exercises no control over whether a Diner makes such a tip, gratuity, or bonus to you or in what amount, and that Caviar bears no responsibility for a Diner's decision to remit such tips, gratuities, or bonuses, if any. As applicable and as permitted by the law in the state or locality where you offer Delivery Services, Caviar may apply any tips, gratuities, or bonuses you receive from a Diner as a "tip credit" toward any minimum wage requirement that may apply to the extent applicable. In certain circumstances, Caviar may delay a Delivery Payment, and any a tip, gratuity, or bonus, to investigate if those payments were fraudulently obtained or the Delivery Services were fraudulently performed and may cancel any payment to you prior to it being paid if it concludes those payments resulted from your fraudulent activities.

b. **Order Failure (Your Fault):** If a Delivery Order failed because you have not made a safe, timely, and professional deliver, Caviar is not obliged to pay the Delivery Payment.

c. **Order Failure (Not Your Fault):** If a Delivery Order failed and you are not at fault (for example, if the Restaurant or Diner is not available), Caviar will pay the Delivery Payment even though the Delivery Order has not been successfully completed.

d. **Adjustments:** You acknowledge and agree that you are only entitled to Delivery Payments for deliveries you actually complete. Accordingly, if a Delivery Payment is remitted to you for a delivery you did not complete, such as instances where Caviar mistakenly remitted payment to you (i.e, an erroneous overpayment), where Caviar has received an order to garnish your earnings, or where Caviar remitted payment to you for a delivery you did not complete due to your dishonest or willful actions (such as fraudulent conduct) or gross negligence, Caviar may make adjustments to your Delivery Payment. You hereby authorize Caviar to make such adjustments to your Delivery Payment without further advance notice to you.

e. **Payments or Instant Payments Through the Cash App:** Unless otherwise agreed to by Caviar and you in writing, Caviar will pay you your Delivery Payments at a regular interval or via instant payment through the Cash App. Payment will be in the form of direct deposit to the bank account or to your linked Cash App account that you specify to Caviar at the time of registration, or as subsequently updated. To ensure proper payment, you are solely responsible for providing and maintaining accurate contact and payment information (including, without limitation, Tax ID Number, entity name, address, date of birth, and necessary payout information (such as account/routing numbers, or Cash App account)) with Caviar. In addition, you will receive a summary of your pay at a regular interval.

5. Term and Termination

a. **Effective Date:** This Agreement is effective as of the day you accept this Agreement and Caviar receives confirmation of this acceptance.

b. **Not an Uninterrupted Service Arrangement:** The parties acknowledge that the terms of this Agreement do not reflect an uninterrupted service arrangement, as this Agreement guarantees you the right to choose when

and if you wish to make yourself available.

c. **Termination:** You may terminate this Agreement at any time for any reason or no reason at all. Caviar, however, does not have “at will” rights to terminate this Agreement. Caviar may only terminate this Agreement and deactivate your account due to a material breach of the Agreement, including as set forth in the Courier Account Access Guidelines (which is incorporated here by reference) and/or for violations of these Legal Terms. You will have the opportunity to have any account deactivation reviewed and investigated pursuant to the Courier Account Access Guidelines.

d. **The Parties’ Obligations Surviving Termination:** Sections 1, 4(A), 4(D), 4(E), 5(D), 5(E), 6, 7, 8, 9, 10, 11, 12 of this Agreement, the Caviar Privacy Policy, your Conditional Offer/Background Check Addendum, and the Courier Account Access Guidelines (each incorporated here by reference), and any other section intended to have effect or bind either party after termination will survive termination.

e. **Accrued Rights:** Termination of this Agreement will not affect any accrued rights or liabilities which either you or Caviar may have at the time termination takes effect.

6. Mutual Arbitration

a. **The Parties’ Mutual Agreement to Arbitrate on an Individual Basis:** Through this arbitration agreement (“Arbitration Agreement”), you and Caviar agree that all disputes between you and Caviar (including its subsidiaries, affiliates, successors, partners, employees, officers, directors, insurers, agents, investors, contractors, and vendors (such as credit reporting agencies)) must be submitted for binding arbitration with JAMS before a single, neutral arbitrator.

b. **Pre-Arbitration Resolution Procedure:** In the event of any dispute between you and Caviar, the parties will use their best efforts to resolve the dispute informally before initiating arbitration. You and Caviar agree to consult and negotiate with each other in good faith and, recognizing each other’s mutual interest, attempt to reach a just and equitable solution satisfactory to both parties. To initiate this procedure, email Caviar at caviar-pre-disputeresolution@squareup.com. If you and Caviar do not reach such a solution within a period of 60 days from when you first emailed Caviar to initiate this procedure, then, upon notice by either party to the other, the dispute will be finally resolved by arbitration administered by JAMS. To the extent the potential claims subject to this pre-arbitration resolution procedure are subject to a statute of limitations that will expire during the pendency of the pre-arbitration resolution procedure, the parties agree that any such claims will be tolled during the pendency of the pre-arbitration resolution procedure.

c. **The Rules Governing Arbitration:** The arbitration shall be administered pursuant to the JAMS Employment Arbitration Rules & Procedures (the “JAMS Rules”) then in effect (available at www.jamsadr.com), unless such rules are in conflict with this Arbitration Agreement, in which case, the terms of this Arbitration Agreement will control. Unless no longer required by law, Caviar will pay all costs unique to arbitration that you would not have incurred in a court proceeding. Arbitration will be kept confidential to the extent permitted by law. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place in the county in which JAMS services are offered that is nearest to where you primarily performed Delivery Services for Caviar at the time the dispute arose. The Arbitrator will be an attorney with experience in the law underlying the dispute or a retired judicial officer. The Arbitrator will issue orders (including subpoenas to third parties) allowing the parties to conduct civil discovery sufficient to allow each party to prepare that party’s claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes. The Arbitrator may hear dispositive motions pursuant to the Federal Rules of Civil Procedure and will apply the standards of the Federal Rules of Civil Procedure governing such motions. If trade secret, confidential and/or proprietary information needs to be introduced into the arbitration, the parties will work with the arbitrator to make sure that such information is not disclosed to the public. Each party will pay its own attorneys’ fees and costs not unique to arbitration when in arbitration, except that the arbitrator may award fees and costs to the

prevailing party to the extent permitted by law. Except as stated otherwise, the arbitrator will have the authority to award all remedies available at law and in equity and will issue a written decision that contains the essential findings and conclusions upon which the award is based. While an arbitrator may award declaratory or injunctive relief, the Arbitrator may do so only with respect to the individual party seeking relief and only to the extent necessary to provide relief warranted by the individual party's claim. All claims adjudicated in arbitration shall be final and binding. The Arbitrator's decision and judgment thereon will not have a precedential or collateral estoppel effect on claims asserted by any individual or entity who was not party to the arbitration. The arbitrator alone will have the authority to interpret the scope and enforceability of this Arbitration Agreement, except that any dispute concerning the scope or enforceability of the prohibition on class, collective, or representative claims, or claims in arbitration for public injunctive relief, must be resolved by a court of competent jurisdiction. The Federal Arbitration Act ("FAA") will govern the interpretation and enforcement of this Arbitration Agreement.

d. **Important Waiver:** Arbitration must take place on an individual basis only, meaning that neither party may initiate or participate in any class, collective, or representative proceeding against the other. Thus, through this Arbitration Agreement, you and Caviar each waive the right to initiate or participate in any class, collective, or representative proceeding (including representative actions under the Private Attorney General Act ("PAGA")) against the other in any forum (including court or arbitration).

e. **Claims Not Subject to Arbitration:** This Arbitration Agreement does not apply to claims that, by law, cannot be subject to this Arbitration Agreement. In addition, this Arbitration Agreement does not prohibit the filing of claims in a small claims court, or administrative claims with government agencies, although any dispute related to your administrative claim with a government agency would be subject to binding arbitration under this Arbitration Agreement, to the extent permitted by law. This Arbitration Agreement will not preclude either party from seeking any provisional remedy (including a temporary restraining order or preliminary injunction) from a court if, absent such provisional relief, the arbitration award may be rendered ineffectual. Nothing in this Arbitration Agreement restricts your ability to engage in communications or actions protected by applicable law

f. **Severability:** If any portion of this Arbitration Agreement is deemed invalid, such as, for example, the prohibition on the right to participate in a representative lawsuit, that limited portion will be severed from this Arbitration Agreement, and the remainder of the Arbitration Agreement will remain enforceable. Notwithstanding any other provision in this Arbitration Agreement, under no circumstances will this Arbitration Agreement be construed to permit class, collective, or representative proceedings in arbitration.

7. Confidentiality and Data Protection

a. **Diner Data:** In the course of providing Delivery Services under this Agreement, you may have access to personal data (any information relating to an identifiable natural person or from which a natural person could be identified) and contact data (any information that could be used to locate or communicate with a Diner, including, but not limited to, physical address, landline phone number, mobile phone number, and email address) relating to Diners ("Diner Data"). With respect to Diner Data, unless the Diner has provided otherwise through express written consent otherwise, you agree that:

- 1. You will use the Diner Data only for the purposes of providing Delivery Services under this Agreement.
- 2. You will take appropriate physical, technical, and organizational measures against unauthorized or unlawful access to, or use, disclosure, acquisition, or processing of the Diner Data and accidental loss or destruction of, or damage to, the Diner Data, including, but not limited to, enabling encryption and password protection on any mobile device (smartphone, tablet, laptop, etc.) that stores Diner Data.
- 3. You will not share or store Diner Data, except as necessary only for the purposes of providing Delivery Services.
- 4. Caviar shall be entitled to audit your compliance with this obligation on reasonable prior notice to you.

b. **Duty of Confidentiality:** To the extent permitted by law, you must keep any confidential information which Caviar supplies to you in connection with the Legal Terms as confidential. “**Confidential Information**” means any information that relates to Caviar’s or Restaurants’ business that is designated as confidential or proprietary, including Diner Data. You will not disclose any Confidential Information to any third party without Caviar’s prior, written authorization except when disclosure is required by law, provided, however, that any such disclosure will be made only in accordance with Section 7(C) below. Confidential Information includes all information marked as being confidential and any other information which might reasonably be considered confidential, including Diner Data. Confidential Information shall also include details of the Diners and Restaurants, such as purchasing history and contact details.

c. **Exceptions to Confidentiality:** Nothing in this Agreement prohibits you from engaging in communications or actions protected by law, such as the right to file a charge with a government agency, provided that you disclose no more Confidential Information than is necessary to effect your protected rights. For example, filing a charge with a government agency does not entitle you to divulge Confidential Information that is not relevant to the charge. In addition, your obligations of confidentiality not apply to any information which: is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure provided that: (a) to the extent permitted by law, you give Caviar prior notice of the request for confidential information sufficient to enable Caviar to seek protective measures, and (b) if either you or Caviar obtains such protection, the disclosed information will continue to be protected as confidential by the receiving party in accordance with the terms of this Agreement.

8. Intellectual Property Rights

a. **Your Information:** Your “Information” is any information you supply to Caviar, including profile information, images, your likeness or voice, suggestions, feedback, ideas, improvements, questions, comments, and social media posts and messages. To enable Caviar to use your Information during and after the term of this Agreement, you grant Caviar a non-exclusive, sublicensable, perpetual, royalty-free, irrevocable, worldwide license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any matter, your Information for the purpose of providing, promoting, or improving the Caviar Platform, Courier App, or the services related thereto, without any acknowledgment or compensation to you.

b. **Caviar’s Intellectual Property:** You agree that Caviar owns all intellectual property rights in and to the Caviar Platform, Courier App, and the services related thereto. These rights include, but are not limited to copyright, patent rights, trademarks (such as the CAVIAR and C Logo trademarks), design rights, database rights, company and product names, and rights in or relating to confidential information. All other trademarks and company and product names used in the Caviar Platform or Courier App are the property of their respective owners. For the term of this Agreement and subject to your compliance with the terms and conditions of this Agreement, Caviar grants to you a non-transferable, revocable, limited, non-sublicensable, non-exclusive license to use the CAVIAR and C Logo trademarks without modification solely for the purpose of providing the Delivery Services under this Agreement. Except as expressly permitted in such limited license, you are not permitted to use, reference, register, or reproduce in any manner Caviar’s or its licensors’ trademarks, copyrights, company names, product and service names, or other indicia of origin. You further agree to immediately cease any and all use of the CAVIAR and C Logo trademarks that Caviar determines in its sole discretion to be nonconforming, disparaging, or otherwise unacceptable. Nothing in this paragraph is intended to restrict your ability to promote yourself without Caviar’s or its licensors’ intellectual property.

9. Limitation of Liability

a. **No Liability for Direct, Indirect, Punitive, Incidental, Special, Consequential, or Exemplary Damages:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE PARTIES, THEIR

AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE CAVIAR PLATFORM OR THE COURIER APP, INCLUDING WITHOUT LIMITATION ANY DELIVERY ORDERS FACILITATED BY THE CAVIAR PLATFORM OR THE COURIER APP.

b. **Disclaimer of Liability or Responsibility:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CAVIAR ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF THE CAVIAR PLATFORM OR THE COURIER APP; (II) PERSONAL INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR CAVIAR PLATFORM OR COURIER APP (INCLUDING DELIVERY ORDERS FACILITATED BY THE CAVIAR PLATFORM OR THE COURIER APP) WITHOUT PREJUDICE TO YOU MAKING ANY CLAIM AGAINST ANY OCCUPATIONAL ACCIDENT INSURANCE YOU RETAIN OR THAT CAVIAR MAY MAKE AVAILABLE TO YOU; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE CAVIAR PLATFORM OR COURIER APP; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR CAVIAR PLATFORM OR COURIER APP BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE CAVIAR PLATFORM; (VII) HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE CAVIAR PLATFORM, THE COURIER APP, OR THE INFORMATION CONTAINED THEREIN; AND/OR (IX) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY.

c. **Limitation of Liability for Disputes Between Couriers, Diner, and/or Restaurants:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CAVIAR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL RESPONSIBILITY FOR MONITORING OR RESOLVING DISPUTES THAT MAY ARISE BETWEEN COURIERS, DINERS, AND/OR RESTAURANTS AS A RESULT OF THE USE OF THE CAVIAR PLATFORM OR COURIER APP, INCLUDING DISPUTES RELATING TO PROPERTY DAMAGE, OR PERSONAL INJURY, UP TO AND INCLUDING DEATH.

d. **Limitation of Liability Does Not Apply to the Extent Prohibited by Applicable Law:** SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. Disclaimer of Warranties

a. **App and Platform Provided “As Is”:** THE CAVIAR PLATFORM AND COURIER APP ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE CAVIAR PLATFORM AND COURIER APP IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CAVIAR PLATFORM AND COURIER APP ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CAVIAR OR THROUGH THE CAVIAR PLATFORM OR COURIER APP WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, CAVIAR, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE CAVIAR PLATFORM OR COURIER APP WILL MEET YOUR REQUIREMENTS; THAT THE CAVIAR PLATFORM OR COURIER APP WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE CAVIAR PLATFORM OR COURIER APP

ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE CAVIAR PLATFORM OR COURIER APP IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE CAVIAR PLATFORM OR COURIER APP.

b. **“No Warranties”:** TO THE EXTENT PERMITTED BY LAW, CAVIAR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY DELIVERY ORDER YOU RECEIVE THROUGH THE CAVIAR PLATFORM OR COURIER APP, NOR DOES CAVIAR WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROPERTY DAMAGE, INCLUDING TO YOUR VEHICLE, PERSONAL INJURY, UP TO AND INCLUDING DEATH, THAT OCCURS AS A RESULT OF PERFORMING THE DELIVERY SERVICES OR YOUR USE OF THE CAVIAR PLATFORM OR COURIER APP.

11. Indemnity

a. **Duties Regarding App, Terms, Violation of Third Party Right, Applicable Law, and Delivery Services:** To the extent permitted by law, you agree to defend, indemnify and hold harmless Caviar and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney’s fees) arising from: (i) your use of and access to the Caviar Platform or Courier App, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; or (vi) any and all claims or damages (alleged or actual) that arise as a result of the Delivery Services that you provide as a courier.

b. **Duties Regarding Taxes, Labor, or Employment Requirements:** To the extent permitted by law, you agree to indemnify, defend and hold Caviar harmless from any liability for, or assessment of, any claims or penalties or interest with respect to such taxes, labor or employment requirements, including any liability for, or assessment of, taxes imposed on Caviar by the relevant taxing authorities with respect to any compensation paid to you or any liability related to the withholding of such taxes.

12. Other Terms

a. **No Assignment of Rights or Obligation Without Consent:** You may not assign any of your rights or obligations under this Agreement without Caviar’s prior written consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns. Nothing in this section will abrogate your ability to engage others as set forth in Section 2(H) above.

b. **Caviar Not Liable for Breaches that Caviar Could Not Control:** Caviar will not be liable to you for any breach of this Agreement where the breach arises because of circumstances which Caviar cannot reasonably be expected to control or cannot reasonably control and this shall include any failure of the Caviar Platform or Courier App and failure of Caviar’s telecommunications and internet links and Caviar’s other utilities.

c. **Entire Agreement:** This Agreement and the Legal Terms incorporated herein set out the entire agreement between you and Caviar and supersedes any prior or inconsistent agreements, negotiations, representations, or promises in relation to the subjects covered by it and in particular shall take priority over (a) any existing arrangements between you and Caviar, (b) any of your standard terms, and (c) any other terms submitted by you.

d. **No Waiver:** Except as otherwise provided herein, no omission, forbearance or delay on the part of either of the parties to enforce fully any provision of this Agreement or any other right, power, privilege or remedy available to it shall be construed as a waiver of such provision, right, power, privilege or remedy or of a right thereafter to enforce the same or any other provision, right, power, privilege or remedy.

e. **Location Data:** Any location data provided by the Service is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate, time-delayed, or incomplete location data may lead to death, personal injury, property, or environmental damage. Neither Caviar nor any of its content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data displayed by the Service. You use any and all location data provided by the Caviar Platform and/or Courier App at your own risk, and you assume that risk.

f. **Severability:** Each provision of this Agreement and the Legal Terms incorporated herein shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable, the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect, except under no circumstances shall this Agreement be construed to permit class, collective, or representative proceedings in arbitration.

g. **Headings:** The various section headings of the Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the parties expressed in the Agreement.

Courier Account Access Guidelines

Posted on: 2/14/19

Effective Date: 2/14/19

The Caviar Platform, which is one part of the larger suite of products and services offered by Square, Inc., connects Diners, Restaurants, and Couriers to help make great deliveries happen every day. Because we value our business relationship with you, we want to be upfront about the kinds of activities that can lead to your account being deactivated from the Caviar Platform and how the process of account deactivation works.

If you have any questions about the Courier Account Access Guidelines, please email Courier Support via the [Contact Form](#).

I. The Account Deactivation Process

If Caviar determines that you or a person whom you have engaged to deliver on your account (“you” or “your”) have not complied with the terms set out in the Courier Independent Contractor Agreement, the Courier Account Access Guidelines, or your Conditional Offer/Background Check Addendum, we may terminate your contract by deactivating your account (“deactivation”), and Caviar will no longer continue to do business with you. Generally, the accounts of couriers who commit **three (3) violations** as identified below, will be deactivated. Caviar also has the right to deactivate courier accounts immediately for any illegal activity or any zero tolerance violation that poses a threat to the health or safety of Couriers, Diners, Restaurants, Caviar, and/or others.

If Caviar determines that you have not complied with the terms set out in the Courier Account Access Guidelines, you may receive a notice for having committed a violation. If Caviar receives notice that you have committed a violation, Caviar may temporarily suspend your account until you have received notice of that violation and Caviar has had an opportunity to investigate it. If a courier completes a certain number of deliveries after incurring a violation, that violation may no longer be counted toward that courier’s account deactivation. If your account is deactivated you will no longer be permitted to return as a courier on the Caviar Platform.

We recognize that there may be circumstances outside of your control that may explain or resolve a violation. In those cases, you will have an opportunity to provide an explanation as to why the violation should not be considered a violation. Couriers whose accounts have been deactivated have the right to contact Courier Support and appeal their account deactivation within seven (7) days of receiving notice that their accounts have been deactivated, including appealing any aspect of the violations constituting the basis of the account deactivation.

Caviar may also temporarily deactivate your account (including changing your password and unlinking your payout method) if it concludes that your account information has been compromised.

II. Violations

Below you can find the specific violations that can lead to your account being deactivated. Please note that if you are delivering large orders, any one of these violations may potentially lead to you not being eligible to deliver future large orders as part of the Courier+ (or similar) program.

1. Failing to Make Timely, Safe, or Professional Deliveries: You agree to provide safe, timely, and professional deliveries. You agree not to tamper with an order's packaging or otherwise consume or damage an order, and to make deliveries using equipment — such as an adequately sized thermally insulated delivery bag sufficient to keep orders at the appropriate temperature — designed to keep the order served at the proper temperature for both quality and health reasons.

By accepting an order for delivery, you agree to start the delivery as soon as you are reasonably and practically able to, pick up the order within the designated collection time, drop off the order within the designated delivery time, and to generally complete the delivery in a safe, timely, and professional manner. Similarly, if you have also agreed to perform an additional Caviar task in connection with an order, you agree to complete that additional task in the same safe, timely and professional manner.

You agree that a key component of making a professional delivery is ensuring that items are delivered according to the Diner's specifications, including making deliveries "door-to-door" if requested by the Diner. Accordingly, you agree to the best of your ability to deliver each order to the location specified by the Diner in his/her order, including, as necessary, making reasonable efforts to contact the Diner, and waiting 10 minutes before an order will be declared forfeited. If the order has been declared forfeited, you agree to leave the order outside the location specified by the Diner unless you have received a different instruction from the Diner or have spoken with Courier Support about a different arrangement.

Caviar understands that there may be occasional emergencies or delivery delays or other issues with an order that prevent you from timely completing an order or an additional task. If that is the case, you should, to the extent possible, notify Courier Support about the emergency situation. Please note that when reaching out to Courier Support, it is important to communicate professionally and via appropriate channels (for example, livechat should only be used for inquiries regarding active orders).

2. Abandoning an Order after Acceptance: Prior to accepting an order for delivery, you will receive information about the location of the Restaurant and the Diner and the amount of money (excluding tips, gratuities, and/or bonuses, that a Diner may choose to offer after completion of a delivered order) that you will earn if you accept and complete the order for delivery. In some cases, you may receive a pre-arranged order in advance of delivery. In order to ensure that Diners receive timely and professional deliveries of orders, you acknowledge that by accepting an order for delivery you are agreeing to complete the delivery. However, we understand that in some

circumstances, following acceptance of an order, you might determine that you will be unable to complete delivery of the order. In order to ensure a timely and professional delivery

- a. If an order is not pre-arranged and you have accepted an order for delivery, Caviar will not be able to accommodate a request to abandon an order made more than five (5) minutes after it is accepted.
- b. If an order is pre-arranged and you have accepted an order for delivery, Caviar will not be able to accommodate a request to abandon an order if it is made less than one (1) hour prior to the delivery.

3. Not Complying with Laws: You agree to comply with all laws and regulations applicable to your performance of the delivery services, which includes maintaining current and valid licenses, permits, registrations, and insurance, as applicable. You agree to obey all relevant safety and traffic laws. You understand that a Caviar order may include alcoholic beverages and/or products other than food and beverage. If the order includes alcoholic beverages, you agree to comply with all laws and regulations relating to alcohol delivery, including checking the identification of the Diner receiving the delivery to verify that the Diner is over 21 years of age (if the Diner does not have or refuses to show his/her identification, please contact live support for assistance). If an order contains alcohol and cannot be delivered to the Diner, the order should be left outside the location specified by the Diner unless you have received a different instruction from the Diner or have spoken with Courier Support about a different arrangement. If that is not possible, the alcohol should be disposed of in an appropriate trash receptacle.

4. Operating a Vehicle Type without Prior Notification: Because couriers who intend to use an automobile or motorcycle to make deliveries with Caviar need a valid driver's license, proof of current insurance listing the courier as a named insured, and a clean driving record, you can only make deliveries and provide services using the vehicle type you previously selected in the Caviar application (i.e., if you have indicated you are using a car to make deliveries, you must use a car and not walk or bike, as available in your area). Of course, you can always contact Courier Support if you'd like to change your vehicle type or add additional vehicle types to your account.

5. Unauthorized Third Party Access to Courier App: You agree not to allow another person to use your Caviar account to access the courier portal, the Courier App, or any other courier tools on the Courier Platform, or to engage with Courier Support, Restaurants, or Diners. You also agree that you will not share your username, password, or any other identification methods that could lead to unauthorized access of the courier portal, the Courier App, or any other courier tools on the Caviar Platform with any other person. This provision does not apply to person you engage to perform services on your behalf, so long as the engagement is consistent with your Courier Independent Contractor Agreement.

6. Misuse of Diner or Restaurant Information: You agree not to use Diner or Restaurant information obtained through your services with Caviar for any purpose other than facilitating food orders and delivery with Caviar, or share that information with any third party, without the prior express written consent of the Diner or Restaurant, as applicable. Nothing in this policy prohibits you from forming your own commercial relationships with Diners or Restaurants — for example, to deliver with them directly outside of the Caviar platform, provided that you obtain the express written consent of the Diner or Restaurant to use their information for that purpose.

7. Violating the Terms of the Caviar Privacy Policy or Courier Independent Contractor Agreement: You agree to comply with terms of the Caviar Privacy Policy and Courier Independent Contractor Agreement (incorporated herein, and together with the Courier Account Access Guidelines, the "Legal Terms") when you sign-up on the Caviar Platform and each time you log onto the Courier App. While you are contractually obligated to comply with all provisions of the Legal Terms, here are some important terms that you should note:

- a. Information you provide to Caviar must be accurate and truthful, including your name, contact information, date of birth, applicable licenses, and proof of insurance, and other information relevant to your registration as a courier;
- b. You are contractually obligated to protect and not misuse or disclose Caviar Confidential Information, including personal information relating to Caviar Diners;
- c. Only individuals who have completed registration as a courier with Caviar are authorized to be involved in the delivery of a Caviar order. This means that you are not permitted to have a passenger in your vehicle, and no pets are permitted for health and sanitation reasons. This provision does not apply to any individual you engage to perform Delivery Services, so long as the engagement is consistent with Section 2(H) of the Courier Independent Contractor Agreement; and
- d. If your account has been deactivated as a courier on the Caviar Platform, you may not attempt to register with different identity or contact details or in a different service area.

8. Reckless, Unsafe, or Unwanted Behavior: The success of the Caviar Platform means that everyone treats each other in a professional and courteous way. Caviar has a zero-tolerance policy for any of the following during or in connection with making deliveries arranged through the Caviar Platform:

- a. Violence, stalking, verbal or sexual misconduct, threatening, aggressive or offensive behavior, harassment, discrimination, or illegal activity;
- b. Delivering an order in an unsanitary manner;
- c. Delivering an order while under the influence of alcohol or drugs;
- d. Use of inappropriate, abusive, threatening, or harassing language or gestures (via any method, including, for example, in person, online, through social networks, or via the Caviar platform);
- e. Unauthorized, unsolicited, or unwanted communication (in person, online, via social media, etc.) with Restaurants, their staff, or Diners not in connection with a delivery or offering Delivery Services;
- f. Activity that Caviar determines is fraudulent;
- g. Carrying firearms or other dangerous weapons during delivery; or
- h. Any activities (during or in connection with making deliveries with Caviar) that disparages or damages:
 - i. Caviar and its brand or reputation;
 - ii. Restaurants and their brand or reputation;
 - iii. Diners; or
 - iv. Third parties.

Privacy Notice for Diners and Couriers

Posted on: June 8, 2018

Effective Date: July 8, 2018

This Privacy Notice describes how Square, Inc. d/b/a Caviar and our affiliates (collectively, “Caviar,” “we,” and “us”) collect, use, disclose, transfer, store, retain or otherwise process your information when you (whether you are a

person or business) create a Caviar account (as a diner or courier) through Caviar's website, applications (including, without limitation, the Caviar mobile application (the "Caviar App") and any APIs), the Caviar Platform, and other services (collectively, "Services").

This Privacy Notice applies to your use of our Services, and covers information collected in connection with your access to and use of our Services. Please read this Privacy Notice carefully. By continuing to interact with our Services, you are consenting to the practices described in this Privacy Notice.

Our Privacy Notice explains:

- What information we collect about you
- How we use your information
- How we share your information
- How long we retain your information
- Cookies and other similar technologies
- Third-party advertising and analytics
- Your choices
- Security
- Storage and processing
- Changes to this privacy notice
- Contact

INFORMATION WE COLLECT ABOUT YOU

We need to collect certain information about you to provide you with the Services or the support you request. The type of information we collect can vary depending on the country from which you access our Services. Additionally, you can choose to voluntarily provide information to us.

Information You Provide

We collect information you provide when sign up for a Caviar account, sign up to become a courier, go through our identity or account verification process, communicate with us, answer our surveys, upload content, or otherwise use the Services.

We collect different information from you depending on whether you are a diner or courier. Such information includes:

Diners:

- Identification information. Your name, email address, mailing address, phone number, and birthdate, and authentication credentials (for example, information you use to login to your account).

- **Contact Information.** When you use our Services to place food delivery orders, we collect your contact information (including phone number, email address, and delivery address).
- **Financial information.** Information such as bank account and payment card numbers.
- **Transaction information.** When you use our Services to make, accept, request, or record payments or food orders, we collect information about when and where the transactions occur, the names of the transacting parties, a description of the transactions, the products you buy through the Services, the payment or transfer amounts, billing and delivery information, and the payment methods used to complete the transactions.
- **Other information you provide.** Information that you voluntarily provide to us, including your survey responses, participation in contests or promotions, specific information you provide to us or to couriers about food orders, suggestions for improvements, referrals, or any other actions performed on the Services.

Couriers:

- **Identification information.** Your name; email address; mailing address; phone number; birthdate; photograph; driver's license, Social Security, Taxpayer Identification, or other government-issued identification; or other historical, contact, demographic, biographical information; and authentication credentials (for example, information you use to login to your account).
- **Financial Information.** Information such as your bank account, payment card, or Cash App information.
- **Tax information.** Taxpayer Identification Number and other information provided on IRS Form W-9.
- **Vehicle and insurance information.** Information including the type of vehicle (if any) you intend to use to make deliveries, licensing information (if any), and, as applicable, certain vehicle information necessary to obtain a motor vehicle report and insurance information.
- **Other information you provide.** Information that you voluntarily provide to us, including data about the way you interact with our Services.

Referrals of Diners or Couriers:

- You may have the opportunity to invite another person to sign up as a diner (to use) or as a courier (to deliver) with Caviar. We collect the information you provide to Caviar about yourself (the referring individual) and the person you are referring, such as name, email address, and phone number. When you provide Caviar with another person's contact information, you represent that you have obtained consent from that person to do so.

Information We Collect From Your Use of our Services

We collect information about you and the devices you use to access the Services, such as your computer, mobile phone, or tablet. The information we collect includes:

- **Precise Geolocation Information.** Information about the location of your device. For more information and to learn how to disable collection of location information, please see below.
- **Device Information.** Information about your device, including your hardware model, operating system and version, unique device identifier, mobile network information, and information about the device's interaction with our Services.

- **Use Information.** Information about how you use our Services, including your access time, log-in and log-out information, browser type and language, Internet Protocol (“IP”) address, the domain name of your Internet service provider, other attributes about your browser, mobile device and operating system, any specific page you visit on our platform, content you view, features you use, the date and time of your visit to or use of the Services, your search terms, the website you visited before you visited or used the Services, data about the way you interact with our Services, and other clickstream data.
- **Delivery Information.** When you use our Services as a courier to deliver food orders, we collect information about when and where orders were offered to you, whether those offers were accepted or rejected, the value of an order that was accepted or rejected, a description of the orders accepted or rejected, when you arrived to pick up an order, whether you stated that all the items of an order have been collected, whether an item has been marked as delivered, the total amount of orders offered to you and accepted or rejected, the amount paid to you for delivering an order, interactions you have with Caviar (including, for example, phone, text, and email communications), and the amounts paid to you as a bonus.

Information We Collect from Other Sources

We also collect information about you from third parties. The information that we collect from third parties will differ depending on whether you are a courier or diner.

Couriers:

- **Identity Verification.** Information from third-party verification services, credit bureaus, financial institutions, mailing list providers, and publicly available sources. In some circumstances, where lawful, this information may include your government-issued identification number.
- **Background Information.** To the extent permitted by applicable laws, we may obtain background check reports from public records of criminal convictions and arrest records as well as motor vehicle report information. We may use your information, including your full name, government-issued identification number and date of birth, to obtain such reports.
- **Credit, Compliance, and Fraud.** Information about you from third parties in connection with any credit investigation, identity or account verification process, fraud detection, or collection procedure, or as may otherwise be required by applicable law. This includes, without limitation, the receipt and exchange of account or credit-related information with any credit reporting agency or credit bureau, where lawful, and any person or corporation with whom you have had, currently have, or may have a financial relationship, including without limitation past, present, and future places of employment, financial institutions, and personal reporting agencies.

Diners:

- **Marketing.** Information from third parties and publicly available sources so we can market to you.

Children’s Information

Our Services are general audience services not directed at children under the age of 13. If we obtain actual knowledge that any information we collect has been provided by a child under the age of 13, we will promptly delete that information.

HOW WE USE YOUR INFORMATION

We may use information about you for a number of purposes, including:

Providing, Improving, and Developing our Services

- Facilitating pickup and delivery of food orders;
- Processing or recording payment transactions;
- Otherwise providing you with the Caviar products and features you choose to use;
- Displaying historical transaction information;
- Providing, maintaining, and improving the Services and the services of Caviar's restaurant partners;
- Improving, personalizing, and facilitating your use of our Services;
- Developing new products and Services;
- Delivering the information and support you request, including technical notices, security alerts, and support and administrative messages;
- Measuring, tracking, and analyzing trends and usage in connection with your use or the performance of our Services;
- Personalizing the content and features of the Services; and
- Providing recommendations to you;
- Enabling you to place or review, accept, and deliver orders;
- Facilitating deliveries.

Communicating with You About our Services

- Sending you news and information we think you may find useful or which you have requested from us about our products and Services;
- Conducting surveys and collecting feedback about our Services.

Advertising and Marketing

- Marketing of our Services;
- Communicating with you about opportunities, offerings, products, services, contests, promotions, discounts, incentives, surveys, and rewards offered by us and select partners;
- If we send you marketing emails, each email will contain instructions permitting you to "opt out" of receiving future marketing or other communications.

Protecting our Services and Maintaining a Trusted Environment

- Investigating, detecting, and preventing or reporting fraud, misrepresentations security breaches or incidents, other potentially prohibited or illegal activities, or to otherwise help protect your account;

- Protecting our or our customers rights or property, or the security and integrity of our Services;
- Enforcing our Terms of Service or other applicable agreements or policies;
- Verifying your identity (e.g., through government-issued identification);
- Complying with any applicable laws or regulations, or in response to lawful requests for information from the government or through legal process;
- Fulfilling any other purpose disclosed to you in connection with our Services; and
- Contacting you to resolve disputes, collect fees, and provide assistance with our Services or your account.

If you are a courier, we may use your information as described above and for the following additional purposes:

- To enable couriers to review, accept, and deliver orders;
- To facilitate deliveries;
- To provide, maintain, and improve the Services and the services of Caviar's restaurant partners;
- To set up your account, and ensure you can deliver with Caviar, including, as necessary, conducting a background check or other applicable verifications.
- To verify that you are eligible to deliver orders as a courier by investigating, as applicable, your licensing history; obtaining and reviewing a motor vehicle report; checking whether you are authorized to work; checking whether you have insurance necessary to make deliveries; checking that you can accept payments through Cash App or any other payment platform that Square may utilize; checking that you have all necessary equipment to make deliveries; and generally ensuring that you are able to make deliveries with Caviar.
- To provide you information that you need to complete deliveries, including, as necessary, allowing you to connect with diners and restaurants to accept and complete deliveries, fulfil orders, verify your location for the purposes of tracking deliveries, balancing the supply of couriers with the demand for deliveries, responding to your questions and assisting with issues you may have while using the Services, ensuring compliance with the Courier Independent Contractor Agreement and Courier Deactivation Policy, and generally using the information we collect to assess couriers' impact on the Services;
- To help facilitate payment to you (including, for example, so that we can directly deposit money in your bank account, make a payment directly to your Cash App account, or other payment methods); calculate payments owed; and determine whether you are eligible for certain additional promotional, incentive, milestone, or bonus payments. If you use your Cash App account to receive payments, please refer to the Cash App terms [<https://squareup.com/legal/cash-ua>].
- To aggregate information, including, for example, courier demographics, interests, and behaviors;
- To better understand and tailor the Services to your interests.

HOW WE SHARE YOUR INFORMATION

We may share information about you as follows:

With Diners, Restaurants, and Couriers

- With other users of our Services with whom you interact through your own use of our Services. For example, we may share information with the restaurant and courier when the diner places a food delivery order, or share information with the restaurant and diner when the courier accepts a food delivery order using our Services.

With our Affiliates

- With our group companies and corporate affiliates, for the purposes outlined above.

With Third Parties

- With third parties to provide, maintain, and improve our Services, including service providers who access information about you to perform services on our behalf (e.g., fraud prevention, identity verification, and fee collection services), as well as financial institutions, payment networks, payment card associations, and other entities in connection with the Services.
- With third parties that run advertising campaigns, contests, special offers, or other events or activities on our behalf and in connection with our Services.

Business Transfers and Corporate Changes

- To a subsequent owner, co-owner, or operator of one or more of the Services; or
- In connection with (including, without limitation, during the negotiation or due diligence process of), a corporate merger, consolidation, or restructuring; the sale of substantially all of our stock and/or assets; financing, acquisition, divestiture, dissolution of all or a portion of our business, or other corporate change.

Safety and Compliance with Law

- If we believe that disclosure is reasonably necessary (i) to comply with any applicable law, regulation, legal process or governmental request (e.g., from tax authorities, law enforcement agencies, etc.); (ii) to enforce or comply with our terms of service or other applicable agreements or policies; (iii) to protect our or our customers' rights or property, or the security or integrity of our Services; or (iv) to protect us, users of our Services, or the public from fraud, harm, alleged or suspected prohibited or illegal activities.

With your Consent

- With your consent. For example:
- At your direction or as described at the time you agree to share;
- When you authorize a third party application or website to access your information.

Aggregated and Anonymized Information

- We also may share (within our group of companies or with third parties) aggregated and anonymized information that does not specifically identify you or any individual user of our Services.

HOW LONG WE RETAIN YOUR INFORMATION

We generally retain your information as long as reasonably necessary to provide you the Services or to comply with applicable law. However, even after you deactivate your account, we can retain copies of information about you and any transactions or Services in which you may have participated for a period of time that is consistent with applicable law, applicable statute of limitations, or as we believe is reasonably necessary to comply with applicable law, regulation, legal process, or governmental request, to detect or prevent fraud, to collect fees owed, to resolve disputes, to address problems with our Services, to assist with investigations, to enforce our General Terms or other applicable agreements or policies, or to take any other actions consistent with applicable law.

COOKIES AND OTHER SIMILAR TECHNOLOGIES

We use various technologies to collect information when you access or use our Services, including placing a piece of data, commonly referred to as a “cookie,” or similar technology on your device and using web beacons. Cookies are small data files that are stored on your hard drive or in your device memory when you visit a website or view a message. Among other things, cookies support the integrity of our registration process, retain your preferences and account settings, and help evaluate and compile aggregated statistics about user activity. We may begin collecting information about you or from activity on devices you use as soon as you use our Services. By using our Services, you permit us to collect and use your information from activity on devices you use in accordance with this Privacy Notice. For more information and to learn how to block or delete cookies used in the Services, please see below.

Certain cookies we use last only for the duration of your web or application session and expire when you close your browser or exit the application. Other cookies are used to remember you when you return to use the Services and, as such, will last longer.

We may also use cookies to:

- Remember that you have visited us or used the Services before. This allows us to identify the number of unique visitors we receive, so that we can provide enough capacity to accommodate all of our users.
- Collect data about the way you interact with our Services (e.g., when you use certain features or upload attachments).
- Customize elements of the promotional layout and/or content of our Services.
- Allow our business partners (including third parties) to use these tracking technologies to track your behavior on our behalf on our Platform (including when you use multiple devices) and on partner websites.
- Enable third parties to collect data about the way you interact across sites outside of our Services.
- Collect anonymous statistical information about how you use the Services (including the length of your web or application session) and the location from which you access the Services, so that we can improve the Services and learn which elements and functions of the Services are most popular with our users.

Some of the cookies used in the Services are set by us, and others are set by third parties who deliver services on our behalf.

Most web and mobile device browsers are set to automatically accept cookies by default. However, you can change your browser settings to prevent automatic acceptance of cookies, or to notify you each time a cookie is set.

You also can learn more about cookies by visiting <http://www.allaboutcookies.org>, which includes additional useful information on cookies and how to block cookies on different types of browsers and mobile devices. Please note, however, that by blocking or deleting cookies used in the Services, you may not be able to take full advantage of the Services.

We also may collect information using web beacons. Web beacons are electronic images that may be used in our Services or emails. We may use web beacons to deliver cookies, track the number of visits to our website and apps, understand usage and campaign effectiveness, and determine whether an email has been opened and acted upon.

THIRD-PARTY ADVERTISING AND ANALYTICS

We can use third-party service providers to provide site metrics and other analytics services. These third parties can use cookies, web beacons, and other technologies to collect information, such as your IP address, identifiers associated with your device, other applications on your device, the browsers you use to access our Services, webpages viewed, time spent on webpages, links clicked, and conversion information (e.g., transactions entered into). This information can be used by Square and third-party service providers on behalf of Square to analyze and track usage of our Services, determine the popularity of certain content, and better understand how you use our Services. The third-party service providers that we engage are bound by confidentiality obligations and other restrictions with respect to their use and collection of your information.

This Privacy Notice does not apply to, and we are not responsible for, third-party cookies, web beacons, or other tracking technologies, which are covered by such third parties' privacy policies. For more information, we encourage you to check the privacy policies of these third parties to learn about their privacy practices. For more information about targeted advertising specifically, please visit <http://www.aboutads.info/choices>.

Examples of our third-party service providers to help deliver our Services or to connect to our Services include:

- **Google Analytics:** We use Google Analytics to understand how our Services perform and how you use them. To learn more about how Google processes your data, please visit <https://www.google.com/policies/privacy/>. To opt out of Google Analytics please visit <https://tools.google.com/dlpage/gaoptout>.
- **Facebook:** We use Facebook to advertise and market our services, and to enable our customers to market their services. To learn more about how Facebook uses your data please visit <https://www.facebook.com/help/325807937506242/> or log on to you Facebook account and access your settings. To understand more about Facebook advertising please see <https://www.facebook.com/about/ads>.
- **BugSnag and Crashlytics:** We use Bugsnag and Crashlytics monitoring apps to monitor errors that impact customers and report diagnostic data to us so we can improve our Service and help to make sure they work when you need to use them. Please visit <https://docs.bugsnag.com/legal/privacy-policy/> to learn more about how Bugsnag processes your data and <https://fabric.io/terms> to learn more about how Crashlytics processes your data.

- Amplitude: We use Amplitude to monitor our Services and understand your use of them. Please visit <https://amplitude.com/privacy> to learn how Amplitude uses your data.

These third party service providers make use of cookies to implement their services.

YOUR CHOICES

Personal Information

You may access, change, or correct information that you have provided by logging into your Caviar account at any time or by making a request to us using the contact details below, in which case we may need to verify your identity before granting access or otherwise changing or correcting your information.

Deactivating Your Account

If you wish to deactivate your Caviar account, you may do so by logging into your Caviar account or by emailing us using the contact details provided below.

Location Information

In order to provide certain Services, or in order to allow you to provide delivery services as a courier, we may require access to location information, including precise geolocation information collected from your device. If you do not consent to collection of this information, certain Services will not function properly and you will not be able to use those services.

To provide such features or services, where available, Caviar and our third-party service providers may collect, use, transmit, process and maintain your location data, including the real-time geographic location of your device, and by using the Services, you consent to Caviar's and its third-party service providers' collection, use, transmission, processing, and maintenance of such location data to provide such services. In addition, by enabling and/or using any location-based services or features within the Services, you consent to Caviar collecting, using, processing, and maintaining information related to your account, and any devices registered to it, for purposes of providing such location-based service or feature to you. Such information may include your device ID and name, device type, and real-time geographic location of your device when you use the Caviar app.

When you use third-party services that use or provide location data as part of the Service (including, for example, Google Maps used during the course of delivering orders), you are subject to and should review such third party's terms and privacy policy on use of location data. Any location data provided by the Service is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate, time-delayed, or incomplete location data may lead to death, personal injury, property, or environmental damage. Neither Caviar nor any of its content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data displayed by the Service.

You can stop our collection of precise geolocation information at any time by changing the preferences on your mobile device. If you do so, some of our mobile applications will no longer function and you will no longer be able to use certain Services or to operate as a courier. You also may stop our collection of precise geolocation information via mobile application by following the standard uninstall process to remove all Caviar mobile applications from your device.

Do Not Track

Do Not Track (“DNT”) is an optional browser setting that allows you to express your preferences regarding tracking across websites. Caviar does not have a mechanism in place to respond to DNT signals. Caviar does track some activity across websites (including your search terms, the website you visited before you visited or used the Services, and other clickstream data) and we may continue to collect information in the manner described in this Privacy Notice from web browsers that have enabled DNT signals or similar mechanisms.

Promotional Communications

You may opt out of receiving promotional messages from Caviar by following the instructions in those messages, by informing the caller that you would not like to receive future promotional calls, by texting STOP to 778272, or by changing your notification settings by logging into your Caviar account. Opting out of receiving communications may impact your use of the Services. If you decide to opt out, we can still send you non-promotional communications, such as digital receipts and messages about your account or our ongoing business relations.

California Privacy Rights

California law permits residents of California to request certain details about our disclosure of your personal information by us to third parties for direct marketing purposes during the immediately preceding calendar year. If you are a California resident and would like to request this information, please contact us at the address listed below.

SECURITY

We take reasonable measures, including administrative, technical, and physical safeguards, to protect your information from loss, theft, misuse, and unauthorized access, disclosure, alteration, and destruction. Nevertheless, the internet is not a 100% secure environment, and we cannot guarantee absolute security of the transmission or storage of your information. We hold information about you both at our own premises and with the assistance of third-party service providers.

For more information about our security practices, please visit <https://squareup.com/security>.

STORAGE AND PROCESSING

We may, and we may use third-party service providers to, process and store your information in the United States, Canada, Japan, and other countries.

CHANGES TO THIS PRIVACY NOTICE

We may amend this Privacy Notice from time to time by posting a revised version and updating the “Effective Date” above. The revised version will be effective on the “Effective Date” listed. We will provide you with reasonable prior notice of material changes in how we use your information, including by email, if you have provided an email address. If you disagree with these changes, you may cancel your account at any time. Your continued use of our Services constitutes your consent to any amendment of this Privacy Notice.

CONTACT

Please contact our Privacy Department with any questions or concerns regarding this Privacy Notice.

Square, Inc. d/b/a Caviar

1455 Market Street, Suite 600

San Francisco, CA 94103, U.S.A.

privacy@squareup.com

If you have any questions or concerns regarding our notice, or if you believe our notice or applicable laws relating to the protection of your personal information have not been respected, you may file a complaint with our Privacy Department listed above, and we will respond to let you know who will be handling your matter and when you can expect a further response. We may request additional details from you regarding your concerns and may need to engage or consult with other parties in order to investigate and address your issue. We may keep records of your request and any resolution.

Conditional Offer / Background Check Addendum

Posted on: 2/14/19

Effective Date: 2/14/19

To make deliveries with Caviar, you must successfully complete an identity verification and a background check (including a review of motor vehicle reports), unless the law requires otherwise. We may periodically require an updated background check to continue performing delivery services. Square will consider qualified individuals with criminal histories in a manner consistent with applicable law, including the San Francisco Fair Chance Ordinance or similar laws of other jurisdictions.

Even after passing a background check, if you deliver with Caviar, you must notify Caviar if you have been convicted of (i) a felony of any kind, or (ii) a misdemeanor relating to the use, sale, or distribution of controlled substances, violence, weapons, sex-related crimes, theft, robbery, burglary, dishonesty, fraud, embezzlement, or unlawful operation of a motor vehicle. In addition, you must immediately notify Caviar if you are (i) charged with, or (ii) a proceeding is instituted against you (including both criminal and civil actions) as a result of any of the following: unlawful operation of a motor vehicle, including driving while intoxicated, reckless or careless driving, homicide by vehicle or any other felony involving a motor vehicle; any crime involving violence, weapons, controlled substances, sexual assault, theft, robbery, burglary, dishonesty, fraud, or embezzlement. Failing to do so may result in your immediate deactivation from the platform.

Square E-Sign Consent

Last updated: January 23, 2019

Square, Inc. and its affiliates and third party service providers ("Square") may need to provide you with certain communications, notices, agreements, billing statements, or disclosures in writing ("Communications") regarding our Services. Your agreement to this E-sign Consent confirms your ability and consent to receive Communications

electronically from Square, its affiliates, and its third party service providers, rather than in paper form, and to the use of electronic signatures in our relationship with you ("Consent"). If you choose not to agree to this Consent or you withdraw your consent, you may be restricted from using the Services.

ELECTRONIC DELIVERY OF COMMUNICATIONS AND USE OF ELECTRONIC SIGNATURES

Under this Consent, Square may provide all Communications electronically by email, by text message, or by making them accessible via Square websites or applications. Communications include, but are not limited to, (1) agreements and policies required to use the Services (e.g. this Consent, the Square Privacy Notice, the Square Seller Agreement, the Square Commercial Entity Agreement, and the Square Cash Agreement), (2) payment authorizations and transaction receipts or confirmations, (3) account statements and history, (4) and all federal and state tax statements and documents. We may also use electronic signatures and obtain them from you.

SYSTEM REQUIREMENTS

To access and retain the electronic Communications, you will need the following:

- A computer or mobile device with Internet or mobile connectivity.
- For desktop website-based Communications:
 - Recent web browser that includes 256-bit encryption;
 - The browser must have cookies enabled. Use of browser extensions may impair full website functionality; and
 - Minimum recommended browser standards are the most recent versions of Mozilla Firefox (see<http://www.mozilla.com> for latest version), Apple Safari (see<http://www.apple.com/safari> for latest version), or Google Chrome (see<http://www.google.com/chrome> for latest version).
- For application-based Communications:
 - A recent device operating system that supports text messaging, downloading, and applications from the Apple App Store or Google Play store; and
 - The most recent versions of Apple Safari or Google Chrome on iOS or Google Chrome for Android OS.
- Access to the email address used to create an account for Square Services.
- Sufficient storage space to save Communications and/or a printer to print them.
- If you use a spam filter that blocks or re-routes emails from senders not listed in your email address book, you must add noreply@messaging.squareup.com to your email address book.

PAPER DELIVERY OF COMMUNICATIONS

You have the right to receive Communications in paper form. To request a paper copy of any Communication at no charge, please write to Square, Inc., 1455 Market Street, Suite 600, San Francisco, CA 94103, USA, Attn: Customer Support - Legal ("Square Address") within 180 days of the date of the Disclosure, specifying in detail the

Communication you would like to receive. For the avoidance of doubt, requesting a paper copy of any Communication, in and of itself, will not be treated as withdrawal of consent to receive electronic Communications.

WITHDRAWAL OF CONSENT TO ELECTRONIC COMMUNICATIONS

You may withdraw your consent to receive electronic Communications at any time, by writing to the Square Address. However, withdrawal of your consent to receive electronic Communications may result in termination of your access to Services. Any withdrawal of your consent will be effective after a reasonable period of time for processing your request, and Square will confirm your withdrawal of consent and its effective date in writing (either electronically or in paper form).

UPDATING YOUR EMAIL ADDRESS

You can change your email address by writing to the Square Address. You may also be able to change your email address yourself through the Services.

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